



**Ritho & another v Muya (Environment and Land Appeal  
E079 of 2022) [2025] KEELC 100 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 100 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E079 OF 2022  
MD MWANGI, J  
JANUARY 21, 2025**

**BETWEEN**

**BENSON RITHO ..... 1<sup>ST</sup> APPELLANT**

**KANGETHE KIIHIKA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FRANCIS NJOROGE MUYA ..... RESPONDENT**

**RULING**

(In respect of the 2<sup>nd</sup> Appellant’s application dated 4<sup>th</sup> November 2024 brought under various provisions of the law seeking a stay of proceedings in MCEL/E278/2021 pending hearing and determination of the appeal)

**Background**

1. On 1<sup>st</sup> October 2024, the Deputy Registrar of this court issued a notice to show cause (notice to show cause) to the Appellants herein to show cause why their appeal should not be dismissed for want of prosecution. The notice to show cause was scheduled for hearing before this court on 11<sup>th</sup> November 2024.
2. The notice to show cause definitely awoke the 2<sup>nd</sup> Appellant from slumber. On 22<sup>nd</sup> October 2024, the 2<sup>nd</sup> Appellant filed his record of appeal. On 5<sup>th</sup> November 2024, he filed the application under consideration.
3. On 11<sup>th</sup> November 2024, the 1<sup>st</sup> Appellant appeared before the court through his advocate. He informed the court that he was in support of the application by the 2<sup>nd</sup> Appellant.
4. The Respondent opposes the application by the 2<sup>nd</sup> Appellant through the replying affidavit sworn at Nairobi on 18<sup>th</sup> November 2024. The Respondent asserts that the ruling appealed against was delivered



way back on 9<sup>th</sup> September 2022. The application has therefore come over two years after the impugned ruling. He terms the same as a delaying tactic and a violation of his right to have his suit resolved in a timely that is cost effective and proportionate and ultimately his right of access to justice.

5. The deponent further asserts that the dispute is before a Magistrate duly gazetted to hear and determine environmental and land disputes. The appeal herein does not therefore raise weighty issues as alleged by the Applicant. It is unmerited, incompetent, scandalous and vexatious and an afterthought.

#### **Court's directions.**

6. The application was orally heard before the court on 16<sup>th</sup> December 2024.
7. The Applicant through his advocate submitted that he informed the trial court about the pending appeal in this matter and the said court directed him to file an application to stay the proceedings before this court.
8. The Applicant submitted that amongst the considerations that the court must take into account are whether the Applicant has an arguable appeal, optimum utilization of the scarce judicial time and resources and whether the application has been brought to the court expeditiously.
9. The Applicant reiterated that the trial court lacked the jurisdiction to entertain the suit filed before it filed by the Respondent. The suit is a commercial suit according to the Applicant since the Respondent's claim is based on breach of contract. It was further filed out of time.
10. Explaining the delay in filing the application, the Applicant submitted that he only obtained the complete record of appeal in October 2024. He averred that he had attempted to move the trial court to stay the proceedings but was advised to file it before this court. He insists that he could not have filed the application before obtaining the full record of appeal.
11. In response, the Respondent through his advocate, Mr. Mirwoba urged the court to dismiss the application. He termed it as a delaying tactic just meant to place impediments on his way and delay the hearing of the suit before the Magistrate's court. He urged the court to uphold the provisions of Article 159 of *the Constitution* on expedient hearing of cases. The ruling appealed against was delivered over two (2) years ago. The trial court's jurisdiction is provided for under the *Environment and Land Court Act* and the Magistrates Court Act subject only to pecuniary jurisdiction.

#### **Issues for determination.**

12. The sole issue for determination is whether it is in the interest of justice to stay proceedings before the trial court pending the hearing and determination of the appeal before this court.

#### **Determination.**

13. It is not in dispute that this court has the discretion to grant an order of stay of proceedings pending appeal under the provisions of Order 42 rule 6 of the Civil Procedure Rules.
14. In the case of *Re Global Tours and Travel Limited (HCWC No. 45 of 2000)*, Ringera J (as he then was) spelt out the principles to be considered in an application for stay of proceedings as follows;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice ...the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the



order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

15. In this case, it is not in dispute that the ruling appealed from and indeed the memorandum of appeal was filed over two (2) years ago. The application by the 2<sup>nd</sup> Appellant was therefore not expeditiously brought before this court.
16. Indeed, as this court pointed out earlier on, the 2<sup>nd</sup> Appellant was merely reacting to the notice to show cause issued by the court. The filing of this application was prompted by the issuance of the notice to show cause by this court.
17. The explanation by the Applicant that he could not have filed the application without the full record of appeal is not satisfactory. Off course, he could have filed the application with only a copy of the ruling appealed from and the pleadings before the trial court. That is all that the court would require to look at in making a decision whether to grant the order of stay or not.
18. Looking at all the factors enumerated by Ringera J in the above cited case, I am not convinced that it is in the interest of justice to issue an order of stay of the proceedings before the trial court. I agree with the Respondent that issuing the order sought by the Applicant would be aiding him in his scheme to delay the hearing of the suit before the trial court.
19. Consequently, I dismiss the application dated 4<sup>th</sup> November 2024 with costs to the Respondent.
20. I further direct that the appeal by the 2<sup>nd</sup> Appellant be listed for notice to show cause why it should not be dismissed for want of prosecution.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 21<sup>ST</sup> DAY OF JANUARY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Mwangi Mburu for the Applicant

N/A by the Respondent and the 1<sup>st</sup> Appellant

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

